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10/688,878

10/21/2003

Osamu Murakami

2003_1276A

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7590

03/17/2005

WENDEROTH, LIND & PONACK, L.L.P.

2033 K STREET N. W.

SUITE 800

WASHINGTON, DC 20006-1021

EXAMINER

BELLAMY, TAMIKO D

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,878

Applicant(s)

MURAKAMI ET AL.

Examiner

Tamiko D. Bellamy

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/29/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 22 and 28 is/are rejected.
- 7) ☒ Claim(s) 12-21 and 23-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: <u>7/13/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 12/29/04. These drawings are not accepted. Amendment to drawings must be labeled "Replacement Sheet" at top drawing page.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the clear protective cover for the opening must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Graalman et al. (4,434,563).

Re to claim 9, as depicted in fig. 3, Graalman et al. discloses a radiation thermometer (42) that monitors the surface temperature of the sample (e.g., tobacco.43) (Col. 5, lines 47-57).

Re to claim 10, as depicted in fig. 3, Graalman et al. discloses the radiation thermometer (42) above the sample (e.g., tobacco 43), and is spaced by a distance that allows the infrared emitted from the sample (e.g., tobacco 43) to be received by the radiation thermometer (43).

Re to claim 16, as depicted in fig. 3, Graalman et al. discloses a sample (e.g., tobacco particles 43) on a sample plate (e.g., conveyer 33). Graalman et al. also discloses a light conducting member (e.g., condenser lens 46) above the sample plate, wherein the radiation thermometer (42) is positioned to receive infrared radiation emitted from the sample (e.g. tobacco 43) after the radiation has been guided by the light conducting member (e.g., condenser lens 46) (Col. 5, lines 60-63).

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5. Claims 9, 10, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tono et al. (JP58165038A).

Re to claim 9, as depicted in fig. 1, Tono et al. discloses a radiation thermometer (4) that monitors the surface temperature of the sample (e.g., sand 6).

Re to claim 10, as depicted in fig. 1, Tono et al. discloses the radiation thermometer (4) above the sample (e.g., sand 6), and is spaced by a distance that allows the infrared emitted from the sample (e.g., sand 6) to be received by the radiation thermometer (6).

Re to claim 16, as depicted in fig. 1, Tono et al. discloses a sample (e.g. sand 6) on a sample plate (13a). Tono et al. also discloses a light conducting member (5) above the sample plate (13a), wherein the radiation thermometer (4) is positioned to receive infrared radiation emitted from the sample (e.g. sand 6) after the radiation has been guided by the light conducting member (5).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 22, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tono et al. (JP58165038A) in view of Spannagel et al. (6,331,683).

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Re to claims 11, 22, and 28, no patentable weight is give to a “**removably**”. Tono et al. discloses a moisture apparatus with a radiation thermometer (4) for detecting the radiation emitted from a sample (e.g. sand 6) on a sample plate (13a). Tono et al. discloses does not disclose a heating reference element, for performing a temperature calibration of the radiation thermometer, disclosed with in the sample plate. As depicted in fig. 3, Spannagel et al. discloses a temperature calibrating disk (4) within a sample plate (e.g., scale pan tray 3). Therefore, to modify Tono et al. by employing on a heating reference element would have been obvious to one of ordinary skill in the art at the time of the invention since Spannagel et al teaches a drying balance having theses design characteristics. The skilled artisan would be motivated to combine the teachings of Tono et al. and Spannagel et al since Tono et al. states that his invention is applicable to measuring moisture of a sample and Spannagel et al is directed to a reference temperature device used for moisture measuring instruments (Col. 3, lines 49-53).

Allowable Subject Matter

8. Claims 12-15, 17-21, and 23-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patent is cited to further show the state of art with respect to a moisture meter for detecting the rate of infrared:

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(JP 09-033428A) as to Hishikari et al.

The following patent is cited to further show the state of art with respect to a radiation thermometer with a light conducting member:

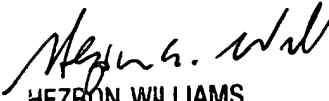
U.S. Pat. No. (5,860,741) as to Tsao et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamiko D. Bellamy whose telephone number is (571) 272-2190. The examiner can normally be reached on Monday - Friday 7:30 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tamiko Bellamy
T.B.
March 11, 2005


HEZRON WILLIAMS
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